

**GENERAL PROCEDURES AND REQUIREMENTS FOR
CERTAIN DO-NOT-RESUSCITATE ORDERS; CREATING A
CRIMINAL OFFENSE**

CHAPTER 11

S.B. No. 11

AN ACT

relating to general procedures and requirements for certain do-not-resuscitate orders; creating a criminal offense.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 166, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. HEALTH CARE FACILITY DO-NOT-RESUSCITATE ORDERS

Sec. 166.201. **DEFINITION.** *In this subchapter, "DNR order" means an order instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.*

Sec. 166.202. **APPLICABILITY OF SUBCHAPTER.** (a) *This subchapter applies to a DNR order issued in a health care facility or hospital.*

(b) *This subchapter does not apply to an out-of-hospital DNR order as defined by Section 166.081.*

Sec. 166.203. **GENERAL PROCEDURES AND REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS.** (a) *A DNR order issued for a patient is valid only if the patient's attending physician issues the order, the order is dated, and the order:*

(1) *is issued in compliance with:*

(A) *the written and dated directions of a patient who was competent at the time the patient wrote the directions;*

(B) *the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2)(E) or (F);*

(C) *the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, or 166.035;*

(D) *the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with Subchapter D; or*

(E) *a treatment decision made in accordance with Section 166.039; or*

(2) *is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the patient's attending physician:*

(A) *the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and*

(B) *the DNR order is medically appropriate.*

(b) *The DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable.*

(c) *Before placing in a patient's medical record a DNR order issued under Subsection (a)(2), the physician, physician assistant, nurse, or other person acting on behalf of a health care facility or hospital shall:*

(1) *inform the patient of the order's issuance; or*

(2) *if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance:*

(A) *the patient's known agent under a medical power of attorney or legal guardian;*
or

(B) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(d) To the extent a DNR order described by Subsection (a)(1) conflicts with a treatment decision or advance directive validly executed or issued under this chapter, the treatment decision made in compliance with this subchapter, advance directive validly executed or issued as described by this subchapter, or DNR order dated and validly executed or issued in compliance with this subchapter later in time controls.

Sec. 166.204. NOTICE REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS.

(a) If an individual arrives at a health care facility or hospital that is treating a patient for whom a DNR order is issued under Section 166.203(a)(2) and the individual notifies a physician, physician assistant, or nurse providing direct care to the patient of the individual's arrival, the physician, physician assistant, or nurse who has actual knowledge of the order shall disclose the order to the individual, provided the individual is:

(1) the patient's known agent under a medical power of attorney or legal guardian; or

(2) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(b) Failure to comply with Subsection (a) does not affect the validity of a DNR order issued under this subchapter.

(c) Any person, including a health care facility or hospital, who makes a good faith effort to comply with Subsection (a) of this section or Section 166.203(c) and contemporaneously records the person's effort to comply with Subsection (a) of this section or Section 166.203(c) in the patient's medical record is not civilly or criminally liable or subject to disciplinary action from the appropriate licensing authority for any act or omission related to providing notice under Subsection (a) of this section or Section 166.203(c).

(d) A physician, physician assistant, or nurse may satisfy the notice requirement under Subsection (a) by notifying the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent or guardian, one person in accordance with the priority established under Section 166.039(b). The physician, physician assistant, or nurse is not required to notify additional persons beyond the first person notified.

(e) On admission to a health care facility or hospital, the facility or hospital shall provide to the patient or person authorized to make treatment decisions on behalf of the patient notice of the policies of the facility or hospital regarding the rights of the patient and person authorized to make treatment decisions on behalf of the patient under this subchapter.

Sec. 166.205. REVOCATION OF DO-NOT-RESUSCITATE ORDER; LIMITATION OF LIABILITY. (a) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if the patient or, as applicable, the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent:

(1) effectively revokes an advance directive, in accordance with Section 166.042, for which a DNR order is issued under Section 166.203(a); or

(2) expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Section 166.203(a).

(b) A person providing direct care to a patient under the supervision of a physician shall notify the physician of the request to revoke a DNR order under Subsection (a).

(c) A patient's attending physician may at any time revoke a DNR order issued under Section 166.203(a)(2).

(d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation described by or made under this section unless the person has actual knowledge of the revocation.

Sec. 166.206. PROCEDURE FOR FAILURE TO EXECUTE DO-NOT-

RESUSCITATE ORDER OR PATIENT INSTRUCTIONS. (a) *If an attending physician, health care facility, or hospital does not wish to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation, the physician, facility, or hospital shall inform the patient, the legal guardian or qualified relatives of the patient, or the agent of the patient under a medical power of attorney of the benefits and burdens of cardiopulmonary resuscitation.*

(b) *If, after receiving notice under Subsection (a), the patient or another person authorized to act on behalf of the patient and the attending physician, health care facility, or hospital remain in disagreement, the physician, facility, or hospital shall make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation.*

(c) *The procedures required by this section may not be construed to control or supersede Section 166.203(a).*

Sec. 166.207. LIMITATION ON LIABILITY FOR ISSUING DNR ORDER OR WITHHOLDING CARDIOPULMONARY RESUSCITATION. *A physician, health care professional, health care facility, hospital, or entity that in good faith issues a DNR order under this subchapter or that, in accordance with this subchapter, causes cardiopulmonary resuscitation to be withheld or withdrawn from a patient in accordance with a DNR order issued under this subchapter is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for that action.*

Sec. 166.208. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE DNR ORDER. *A physician, health care professional, health care facility, hospital, or entity that has no actual knowledge of a DNR order is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for failing to act in accordance with the order.*

Sec. 166.209. ENFORCEMENT. (a) *A physician, physician assistant, nurse, or other person commits an offense if the person intentionally conceals, cancels, effectuates, or falsifies another person's DNR order or if the person intentionally conceals or withholds personal knowledge of another person's revocation of a DNR order in violation of this subchapter. An offense under this subsection is a Class A misdemeanor. This subsection does not preclude prosecution for any other applicable offense.*

(b) *A physician, health care professional, health care facility, hospital, or entity is subject to review and disciplinary action by the appropriate licensing authority for intentionally:*

- (1) failing to effectuate a DNR order in violation of this subchapter; or*
- (2) issuing a DNR order in violation of this subchapter.*

SECTION 2. The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement Subchapter E, Chapter 166, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 3. Subchapter E, Chapter 166, Health and Safety Code, as added by this Act, applies only to a do-not-resuscitate order issued on or after the effective date of this Act.

SECTION 4. This Act takes effect April 1, 2018.

Passed the Senate on July 26, 2017: Yeas 21, Nays 10; the Senate concurred in House amendment on August 15, 2017: Yeas 21, Nays 10; passed the House, with amendment, on August 13, 2017: Yeas 122, Nays 20, one present not voting.

Approved August 16, 2017.

Effective April 1, 2018.